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PHILIP MORRIS STATEMENT ON DISMISSAL OF INDUSTRY CHALLENGE TO FDA

Today's court decision to dismiss the tobacco industry's challenge to FDA's assertion of jurisdiction merely postpones the inevitable judicial review of the agency's illegal course of action.

When President Clinton announced on Aug. 10 that he had instructed David A. Kessler and the FDA to regulate cigarettes and restrict adult access to tobacco, the industry filed an immediate lawsuit so that this issue could be resolved sooner rather than later. The government, however, has come into court and told a federal judge it **still** has not decided whether the FDA even has the authority to issue regulations, much less whether the agency will actually take action if it decides it has the authority.

While most Americans probably view this government double-speak as completely unbelievable, the court took the government at its word and dismissed the case on the technical legal grounds that the case is not yet "ripe."

Today's decision in no way is a victory for the government. It is merely a victory for those who seek to delay judicial review of an illegal FDA decision.

Our Constitution is based on the understanding that Congress makes the laws, the executive branch carries out those laws and the courts review the actions of the other two branches of government. The FDA, however, wants to ignore Congress, make its own law and shield itself from the scrutiny of a court. This it cannot do.

Philip Morris is confident that this case will demonstrate that the FDA's regulatory effort ultimately has nothing to do with youth and everything to do with an abuse of regulatory power.

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